

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Kenric Mc Clary And Constance Mc Clary**      Case No. 10-82001  
Chapter 13

Social Security No. xxx-xx-0734 and xxx-xx-8570  
Address:3918 Wake Forest Highway, Durham, NC 27703-

Debtors

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**OBJECTION TO CLAIM**

**NOW COME** the Debtors above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully object to the proof of claim filed by the creditor WELLS FARGO BANK, NA AS TRUSTEE and dated November 24, 2010, for the following reasons:

1. The Proof of Claim asserts that Wells Fargo Bank, N.A. is entitled to fees totaling \$4,033.46 for the following described expenses:
  - a. Foreclosure Fees & Expenses: \$3,130.96
  - b. Bankruptcy post-petition, pre-confirmation legal fees & expenses \$ 300.00
  - c. Inspection fees: \$552.50
  - d. NSF: \$ 50.00
2. Pursuant to N.C. Gen Stat. § 45-91, for a fee to be allowed, Wells Fargo Bank, N.A. must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address within 30 days after assessing the fee.
3. Wells Fargo Bank, N.A.'s proof of claim does not specify when the fees were incurred, and does not specify when the fees were assessed.
4. Wells Fargo Bank, N.A.'s proof of claim does not include a copy of the explanatory statement mailed to the borrower at the borrower's last known address.
5. Wells Fargo Bank, N.A.'s failure to provide notice of the fees charged constitutes a waiver of said fees pursuant to N.C. Gen Stat. § 45-91(3). See *In re Saeed*, No. 10-10303 (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641). See also *In re Obie*, No. 09-80794, (Bankr. M.D.N.C., Nov. 24, 2009) (2009 WL 4113587).

**WHEREFORE**, the Debtors pray that the Court enter an Order reducing the pre-petition arrearage claim to the sum of approximately \$10,851.68 and the on-going payment to \$844.59 . Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtors request that, until such time as the aforementioned payment history is provided, the Court treat any

hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a). Lastly, pursuant to N.C.G.S. § 6-18 & 19, the Debtors pray that the costs of this action be taxed to the Creditor and that the attorney for the Debtors be awarded fees in the amount of \$500.00.

Dated: August 3, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward Boltz

Edward Boltz

N.C. State Bar No. 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

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**CERTIFICATE OF SERVICE**

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on August 3, 2011. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

WELLS FARGO BANK, NA AS TRUSTEE

**Attn: Managing Agent**

C/O Bac Home Loans Servicing, Lp

7105 Corporate Drive

Plano, TX 75024-

Sean Corcoran

Attorney for WELLS FARGO BANK, NA AS TRUSTEE

5121 Parkway Plaza Drive

Suite 300

Charlotte, NC 28216-

U.S. Bankruptcy Administrator

Richard M. Hutson, II

Chapter 13 Trustee

/s Renee Nolte  
Renee Nolte